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10 Attorney for Defendant GENERAL INSURANCE COMPANY OF AMERICA
(erroneously sued as *Safeco Surplus Lines Insurance Company*)

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

15 SAN DIEGO CENTER FOR CHILDREN,) Case No. 08-CV-782-JLS-AJB
16 Plaintiff,)
17 v.) **ANSWER OF DEFENDANT GENERAL**
18 SAFECO INSURANCE COMPANY,) **INSURANCE COMPANY OF AMERICA**
19 SAFECO SURPLUS LINES INSURANCE) **TO COMPLAINT FOR DECLARATORY**
COMPANY, and DOES 1 through 5,) **RELIEF**
inclusive,)
20 Defendants.)
21) Judge: Hon. Janis L. Sammartino
Magistrate: Hon. Anthony J. Battaglia)

23 PLEASE TAKE NOTICE that Defendant GENERAL INSURANCE COMPANY OF
24 AMERICA, a Washington Corporation erroneously sued as Safeco Surplus Lines Insurance
25 Company (“Defendant”), answers the Complaint of Plaintiff San Diego Center For Children
26 (“Complaint”) as follows:

1 2. In answering paragraph 2 of the Complaint, Defendant denies the allegations
2 contained therein.

3 3. In answering paragraph 3 of the Complaint, Defendant denies the allegations
4 contained therein, and alleges it issued a Professional Healthcare Facility Liability policy of
5 insurance, policy no. HLP7754265J, effective from Mary 23, 2003 to May 23, 2004, to Plaintiff.

6 4. In answering paragraph 4 of the Complaint, Defendant denies the allegations
7 contained therein.

8 5. In answering paragraph 5 of the Complaint, Defendant admits the allegations
9 contained therein and alleges that Defendant is a corporation organized and existing under the
10 laws of the State of Washington with its principal place of business in Seattle, Washington.

11 6. In answering paragraph 6 of the Complaint, Defendant denies the allegations
12 contained therein

13 7. Defendant has no information or belief sufficient to enable it to answer the
14 allegations of Paragraph 7 of the Complaint, and basing its denial on that ground, denies the
15 allegations contained therein.

16 8. Defendant has no information or belief sufficient to enable it to answer the
17 allegations of Paragraph 8 of the Complaint, and basing its denial on that ground, denies the
18 allegations contained therein.

19 9. In answering paragraph 9 of the Complaint, Defendant admits Plaintiff has
20 tendered its defense of the Kotake Action to Defendant. Except as expressly admitted,
21 Defendant denies the allegations contained in paragraph 9 of the Complaint.

22 10. In answering paragraph 10 of the Complaint, Defendant admits it declined to
23 defend Plaintiff in the Kotake action. Except as expressly admitted, Defendant denies the
24 allegations contained in paragraph 10 of the Complaint.

25 11. Defendant has no information or belief sufficient to enable it to answer the
26 allegations of Paragraph 11 of the Complaint, and basing its denial on that ground, denies the
27 allegations contained therein.

12. In answering Paragraph 12 of the Complaint, Defendant incorporates by reference the allegations in Paragraphs 1 through 11, inclusive, of this Answer as fully set forth herein.

13. In answering paragraph 13 of the Complaint, Defendant denies the allegations contained therein.

14. In answering paragraph 14 of the Complaint, Defendant admits an actual and bona fide controversy exists between Plaintiff and Defendant as to their rights and obligations under the policy of insurance issued by Defendant to Plaintiff. Except as expressly admitted, Defendant denies the allegations contained in paragraph 14 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

10 15. Defendant alleges that the Complaint, and each and every cause of action and
11 claim therein, does not allege facts sufficient to state a claim against Defendant.

SECOND AFFIRMATIVE DEFENSE

13 16. Defendant alleges that Plaintiff has failed to satisfy all conditions precedent to
14 recovery.

THIRD AFFIRMATIVE DEFENSE

16 17. Defendant alleges that Plaintiff has failed to satisfy all conditions subsequent to
17 recovery.

FOURTH AFFIRMATIVE DEFENSE

18. Defendant alleges that Plaintiff's Complaint, and each and every cause of action
and claim therein, is barred, in whole or in part, as Defendant has performed any and all
obligations toward Plaintiff in good faith; there was no breach of contract, and therefore there
could be no breach of the implied covenant of good faith and fair dealing or other tortious
conduct on the part of Defendant.

FIFTH AFFIRMATIVE DEFENSE

19. Defendant alleges that Plaintiff's Complaint is barred by the doctrine of laches

SIXTH AFFIRMATIVE DEFENSE

1 WHEREFORE, Defendant GENERAL INSURANCE COMPANY OF AMERICA, a
2 Washington corporation erroneously sued as Safeco Surplus Lines Insurance Company, requests:

3 1. That Plaintiff take nothing by this action;
4 2. That judgment on the Complaint be rendered in favor of Defendant;
5 3. The costs of suit incurred herein; and
6 4. For such other and further relief as the Court may deem just and proper.

7 Dated: May 8, 2008

LAW OFFICES OF BRUCE P. AUSTIN

8
9 By: s/ William P. Harris III

10 William P. Harris III, Esq., Attorney for Defendant
11 GENERAL INSURANCE COMPANY OF AMERICA

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1	UNITED STATES DISTRICT COURT – SOUTHERN DIVISION		FOR COURT USE ONLY
2	TITLE OF CASE: SAN DIEGO CENTER FOR CHILDREN v. SAFECO INS. CO., et al.		
3	William P. Harris III (123575) LAW OFFICES OF BRUCE P. AUSTN 1455 Frazee Road, Suite 802 San Diego, CA 92108 Tel: (619) 209-4000 Fax: (866) 724-0742		
4	ATTORNEY(S) FOR: Defendant GENERAL INSURANCE COMPANY OF AMERICA	HEARING DATE: TIME: DEPARTMENT:	CASE NO: JUDGE ASSIGNED:
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I, Teri A. Moore, declare that: I am over the age of eighteen years, not a party to the action, and employed in the office of a member of the Bar of this Court at whose direction the service was made in the County of San Diego, California, where the mailing occurs. My business address is 1455 Frazee Road, Suite 802, San Diego, California.

On May 8, 2008, I served the following:

**ANSWER OF DEFENDANT GENERAL INSURANCE COMPANY OF
AMERICA TO COMPLAINT FOR DECLARATORY RELIEF**

(XX) BY ELECTRONIC TRANSFER: I caused all of the pages on the above-entitled documents to be sent to the recipients noted via CM/ECF e-service at the recipient's office.

20	Richard P. Edwards, Esq. MUNRO SMIGLIANI & JORDAN LLP 2535 Truxtun Road, Suite 208 San Diego, CA 92106 Tel: (619) 237-5400 Fax: (619) 923-2866	Plaintiff
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27	Executed on May 8, 2008	<u>/s/ Teri A. Moore</u>
28		Teri A. Moore -5-

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.